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DATE FILED: 8/13/08

August 13, 2008

Via Fax (212) 805-7933

Hon. Andrew J. Peck  
U.S. Magistrate Judge  
United States District Court  
Southern District of New York  
U.S. Courthouse, Room 1370  
500 Pearl Street  
New York, NY 10007

**MEMO ENDORSED** - [Signature]

Re: Procapui-Produtiores v. G.F. Higgins, Inc., et al.; 07CV6627

Dear Magistrate Judge Peck:

I represent the Higgins Defendants in the above matter.

On Friday, August 8, your Honor directed that the Higgins parties produce additional invoices from vendors. Specifically, we were directed to produce the invoices for shrimp and lobster (all types) from the Higgins's largest vendor for the 2002 year.

Late on Friday afternoon, we received via ECF Judge Jones's decision and order dismissing all Plaintiff's RICO and common law fraud claims, leaving only the common law claim for "goods sold and delivered".

The ground asserted by Plaintiff for seeking the invoices is that it says it wishes to attempt to develop proof of its contention that the Higgins parties and Layani conspired to underprice the shrimp and lobster purchased from Procapui so as to deliberately create an excessive profit which would then be split with Layani all of which contentions the Higgins parties vigorously deny. Thus, the sole purpose of seeking the additional invoices is solely to attempt to support Plaintiff's fraud claims.

In light of the above, are the Higgins parties now required to comply with your Honor's direction of August 8, 2008? We ask that we be relieved of this now unnecessary task. I have spoken to Mr. De Maio and he says opposes our application. We understand he will write or has written to state his views.

Thank you very much.

Very truly yours,

John J. Phelan, III

cc. via email

Luigi DeMaio, Esq.  
Attorney for Plaintiff

**MEMO ENDORSED 8/13/08**

Because the draft for Higgins  
Gover / HIG 109701, eg. 1.9) that  
H's common law fraud claim is  
dismissed (contrary to its position -  
Plaintiff's counsel's letter), I should not  
produce the other party wrongs, that  
are wholly to its own detriment  
from claim.

SO ORDERED:

Hon. Andrew Jay Peck  
United States Magistrate Judge

**BY FAX**

My Best to all  
John J. Phelan

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

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**Dated:** August 13, 2008

**Total Number of Pages:** 3

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## **TRANSCRIPTION:**

### **MEMO ENDORSED 8/13/08**

Because it is clear from Judge Jones' Opinion (Dkt. No. 97 at, e.g., p. 9) that plaintiff's common law fraud claim is dismissed (contrary to the position in plaintiff's counsel's letter), defendants need not produce the other party invoices, that were relevant only to the now dismissed fraud claim.

**Copy to:** Judge Barbara S. Jones